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Constructions permit a method to control urban activity

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Abstract

The Algerian legislator, imposed a construction permit for several resent, including fighting chaotic buildings, observing the rules of construction and building, creating and maintaining a harmonious urban. This can only come through imposing control over every construction process whatever its nature. With prior censorship through autorisation for the three parties, according to the nature of the buildings, namely they are the President of the Municipal commission Assembly, the Governor of the State, or the Minister in charge of reconstruction. However, when the administration uses its authority by granting or rejecting the construction permit, may exceed its validity and be issue illegal decisions, whether in the face of the license applicant or in the face of others, either refusal or granting the license without taking into account the legal or regulatory conditions, in this case resorting to the competent administrative court remains the only recourse to claim those judgments for cancellation and even to demand damages from the administration if it has a reason.

Keywords: *construction license ,Prior censorship, construction Operations, messy building, administrative decision, administrative judiciary.*

Introduction

Article 27 of Law No. 25/90 of November 18th, 1990, relating to real estate directives, defined private real estate as the right to enjoy and dispose of real property or rights in kind for the use of the owner according to its nature or purpose.

By extrapolating this article, it is noted that the law protects the absolute freedom of the individual to dispose of his immovable property, and the right to build is considered part of this right to dispose of, and therefore the owner is free to build without the need to obtain a license¹.

As is well known, there is an exception for every rule. The legislator has discouraged this freedom in the field of construction and it is necessary to obtain a prior administrative permission according to preserve public order and the public interest² and in order to balance the protection of the rights of individuals and the rights of society.

It is known that the Algerian legislative arsenal abounds with a number of laws regulating the field related to planning permission.

However, the problems raised in this field, especially the phenomenon of tin houses and construction without an administrative permission, prompt the question to what extent the laws regulating planning permission can be considered capable of addressing these problems, or are they considered merely quantitative laws that lack some efficiency in order to be able to cope with developments and changes occurring in the field of city planning and construction?

1- Definition of a planning permission.

Dr. AZRI EZZINE defined a planning permission as an administrative decision issued by a legally competent authority, according to which a person (naturally or legally) has the right to construct a new building or change an existing one before starting construction work, which must respect the rules of the Urban Law³.

Legislatively, a planning permission was defined as an administrative permission issued by a competent authority for that achievement or the construction of any building of any kind, including enclosing walls or any modification of a building related to its external appearance⁴.

However, The Law N 15-08 of July 20th, 2008, which sets the rules for conforming buildings and completing their completion, did not mention a definition of a planning permission, but it was necessary to obtain a planning permission before constructing any building, in Article 6 of it.

As a comprehensive definition of the above, it can be said that a planning permission is a license, an administrative document⁵, or an administrative decision issued by a competent, qualified administrative authority that allows the construction, modification or transformation of a building.

Unified in addition to protecting the constitutionally guaranteed right of ownership while ensuring oversight over it.

2 - Features of the planning permission .

The planning permission is characterized by several advantages that distinguish it from the rest of the other construction contracts, whether traditional or new, which can be summarized in the following:

*The person concerned (the owner of the construction project) must apply for a planning permission before starting construction, accompanied by the file and the required documents specified by law.

*Issuance of it by specialized administrative bodies that follow procedures and studies before considering the submitted application, and it remains with the discretion to refuse or accept the granting of a planning permission in line with the provisions of the law

*That the subject of the planning permission application is related to the construction or change of a building, meaning that the issuance of a planning permission is only in the case of erecting a new building or changing an existing building.

3- Objectives of the planning permission.

*The planning permission aspires to achieve the objectives of the law.

The main objective of the planning permission application for the applicant is to carry out construction works.

However, it has other goals related to the administration on the one hand and society on the other hand, so its primary role is to "balance the public interest by respecting the laws of building and construction and the private interest by meeting the needs of individuals and institutions in the fields of construction and city planning⁶."

*A planning permission is a "tool to monitor respect for the general rules or principles of preparation or city planning, as well as control over construction works.

A planning permission can be considered a form of applying the urban law and monitoring the construction and building field, addressing illegal construction and combating chaotic housing.

The planning permission also plays a role in preserving the beauty of nature and coordinating buildings⁷." In addition to being considered a tool for environmental protection, this is evident through the exceptional measures applied in coastal and desert private places in addition to forest and agricultural areas, as well as its role in preserving on the environment in the file submitted to the competent authorities in order to obtain a planning permission, which must contain:

1. Type of materials used in construction
2. The type of liquid, solid and gaseous substances and their quantities harmful to public health, agriculture, and the environment in the wastewater, gas emissions, treatment, storage and filtering devices.
3. Means of defense and fire rescue.

4- Characteristics of the planning permission.

The planning permission has characteristics that distinguish it from the rest of the planning permission and city planning, which can be summarized in the following:

*Issuance of an administrative decision by a competent authority: A planning permission is a written administrative decision issued by an administrative authority with discretionary authority, which is represented by the president of the municipal popular assembly or the Wali or the minister in charge of city planning (the minister of housing, urbanization and the city)⁸.

The administrative decision must be tribal: in the sense that it is forbidden for the license applicant to start construction operations before the issuance of this administrative decision, and therefore any completion before the issuance of the license is the money for demolition and removal because it is considered a building without a permission

*That the administrative decision relates to the establishment of a new building or the modification or change of an existing building: that is, all construction operations to which the property is subject require the presence of a planning permission, with the exception of repair and restoration operations.

5- Planning permission application limits.

The limits of the application of the planning permission are meant the building operations that require obtaining it before and which are determined by the law and are represented in the construction, extension or change of new buildings or the completion of walls for the purpose of strengthening.

What we will separate in this section.

a. **Building operations that require a planning permission:** Article 52 of Law N 90-29 of 01/12/1990 related to preparation and reconstruction specified building operations that require a permission by saying that a planning permission is required for the construction of new buildings.... and for the extension of existing buildings and the constructive change that touches the huge walls of it... and to achieve a solid wall for reinforcement or fencing.

From this text, the construction process can be summarized as follows:

***Construction of buildings:** that is, building a fixed property from scratch for the first time on the ground using building materials and by resorting to techniques and processes by engineers and technicians, sometimes by real estate agents and by a labor force specialized in construction, and this construction must be built above the ground, such as buildings And houses, or built in the ground, such as the agreement and metro stations, or built in the waters of seas and rivers, such as barrages, reservoirs and dams⁹.

***Extension and alteration of existing buildings:** Extension of existing buildings means the expansion or elevation of previously constructed buildings. As for the expansion process, it is intended to add space and volume to the building transversely, such as dividing a room to get two rooms.

As for the ramping process, it is meant to increase the building vertically, such as adding a floor in a house.

***Erection of walls for reinforcement or fencing:** If the property owner wants to build a wall to support and stabilize his building, or intends to consider it a fence to surround his building, in both cases it is necessary to obtain a planning permission before it is completed

B/Operations of building exempted from planning permission

Some areas do not require obtaining a planning permission due to their characteristics or their distinguished character and what is imposed by some special circumstances.

*Article 53 of Law 90-29 related to the development and reconstruction specifies the buildings exempted from the planning permission.

Where it exempted the buildings affiliated with the Ministry of National Defense, which protects the secret of national defense, from obtaining a planning permission, saying, "The buildings that are protected by the secrecy of national defense are not subject to the planning permission ... and this is confirmed by successive laws, which is the text of Article 13 of the specific Law 08-15 To the rules of compatibility of buildings and the completion of their implementation by saying, "The conditions for the completion, preparation and exploitation of military buildings carried out by the Ministry of National Defense or on its account are not subject to the provisions of this law." In addition to the Executive Decree 15-19 of January 25th, 2015 specifying the modalities of the preparation and delivery of construction contracts in the second paragraph of its first article, which states: "These documents do not mean the base structures that are protected by the secrecy of national defense and include the military base structures designated to implement the main tasks of the Ministry of National Defense."

The second paragraph of the previous Executive Decree 15-19 has also identified another case that does not require obtaining a planning permission, and is represented in special basic structures which have a strategic character of the first degree and are affiliated with certain departments, agencies or institutions

***Building permits in special areas:** Certain areas are subject to special procedures for granting a planning permission 'because of the natural, cultural or economic features they enjoy¹⁰ and these special areas are represented in forest areas, tourist areas, agricultural land and desert areas

***Building permits in the field of forestland:** means forestland within the meaning of Article 04 of Executive Decree No. 2000-115 of 24th, May 2000, which defines the rules for surveying national forestland "any land covered by one or more forests, either naturally or by afforestation or reforestation." Over a continuous area of more than ten hectares.

Forests are also defined as 'all land covered by forest types in the form of forest gatherings in a normal case¹¹ and also means forest land.

Each pool contains at least:

-100 mature trees per hectare in arid and semi-arid areas

-300 trees per hectare at maturity in wetlands and semi-wetlands¹² .

Considering that forestland, like other private areas, is a national economic and tourist resource and therefore a significant source of revenue for the public treasury, the law has given them special attention in the field of construction and it is necessary to obtain special

permission, so that they cannot be removed or stripped for construction purposes without the authorization of the Minister for Forestry after consultation with local authorities , it also requires an authorization from the President of the president of the municipal popular assembly after notice from the Forest Service in case of construction at a distance of less than 500 meters on the wooded area¹³

• **Planning permission in agricultural lands:** Agricultural lands were defined in Article 04 of Law No. 90-25 related to the real estate directive dated December 18th , 1990, that “agricultural or agricultural-oriented lands are every land produced annually by human intervention or during years of production consumed by humans or animals or consumed in industry directly or after Converted .

The legislator has prohibited the licensing of building on agricultural lands in order to protect and preserve them due to their great importance. However, it allowed, as an exception, to obtain administrative licenses for building after obtaining advice from the Minister of Agriculture in it, provided that this construction is related to agricultural activity¹⁴ .

“But the public authorities set out on the plain and ignored all the new legal provisions aimed at protecting the environment by appropriating the best agricultural lands by diverting their destination to build one million houses and one hundred shops in each municipality that became hotbeds of corruption, or ceding them to the private, in an alarming silence¹⁵.”

***Planning permission in the tourism field:**

Algeria is rich in many natural, historical and cultural tourist areas and aims to protect and preserve them as an important resource after the economic field. The legislator was required to obtain a planning permission before undertaking any construction project in the tourism field, and it was necessary to obtain mandatory tribal advice from the Ministry of Tourism and the Ministry of culture

Among the aspects of protection for tourist areas is what is stated in Article 50 of Law 99-01 of January 6, 1999, which specifies the rules related to hotels, obligating tourism directorates in the event of building hotels or tourist resorts to carry out investigations to study the impact of the construction process on these tourist sites and their conformity

He also obligated them to monitor the construction projects in these sites during and during the activity. In the event of non-respect of the rules of urbanization, a report is issued to resort to the judiciary in order to oblige the owner of the project to stop the continuation of the works and oblige him to abide by these rules under penalty of criminal and civil accountability. Article 02 of Law No. 04-421 of December 2004 specifying the modalities of prior consultation for departments in charge of tourism and culture in the field of granting planning permission s within expansion areas and tourist sites requires obtaining a prior opinion from the administration in charge of tourism before applying for a planning permission and This is in the event that the construction projects are located within the expansion areas and the tourist areas, in addition to the obligation to obtain a prior opinion from the Ministry of Culture if these tourist areas have a cultural character.

***Planning permission in desert areas:**

It is not possible to obtain a planning permission in desert areas except by adhering to specific legal conditions due to the natural characteristics known to these areas, including high temperature, sandstorms ... etc. This is what is stipulated in Articles 4-6-8-11-30 of Executive Decree No. 14 -27 dated February 01st, 2014 specifying the urban, architectural and technical specifications applicable to buildings in the states of the south. One of the most important of these specifications is that the building area is not less than 250 square meters and at a height of 9 meters for housing and 12 meters for urban equipment. It also requires the building to prevent the entry of sunlight and heat leakage through the use of light paint colors while providing ventilation holes, In addition to the necessity of merging the traditional urban character with the aim of preserving it with the modern urban character in order to keep pace with the times.

6- The stages of issuing a planning permission.

These stages are represented in the steps taken by the competent administrative authorities to grant a planning permission before issuing its final decision, which passes through two stages:

The first stage: the stage of studying the planning permission application.

The second stage: the stage of issuing the grant decision or refusing to grant a planning permission.

A. Stage of planning permission application: In order to obtain a planning permission, the applicant must prepare an administrative, technical, and architectural file.

1) Administrative file for obtaining a planning permission.

At this stage, the concerned person submits an application for obtaining a planning permission supported by a file containing administrative documents specifying his capacity, which are:

- A copy of the ownership title or possession certificate.
- A license from the owner if he is a tenant.
- A copy of the administrative contract that provides for the allocation of the plot of land or the building.
- A copy of the statutes if the owner or his client is a legal person”¹⁶ .

The file also includes other documents mentioned in Article 43 of Executive Decree No. 15-19.

Retail license references for buildings programmed on a plot of land located within a division designated for housing or another purpose.

Decision of the competent authority licensing the establishment or expansion of industrial and commercial establishments classified in the categories of dangerous, unhealthy and troublesome establishments

A certificate of exploitability is delivered in accordance with the above-mentioned provisions for the buildings located within a plot of land with a partition licence.

The applicant may also indicate that the completion of the works belongs to a building or several buildings in one or several shares

Technical documents: These documents are represented in Article 43 of the Executive Decree referred to above, and they are:

"The number of workers, the method of building roofs and the type of materials used.

Designs of water drainage networks and a brief description of the devices supplying electricity, gas, heating, connection to potable water, disinfection and ventilation.

The type of liquid, solid, and gaseous substances and their quantities harmful to public health, agriculture and the environment present in the wastewater discharged, the emission of gases, treatment devices, storage and filtration

A brief description of the organizations for the production, transformation and storage of raw materials and liquefied products for industrial buildings.

Means of defense and rescue from fires.

The level of noise emitted for buildings with industrial and commercial use and institutions designated to receive the public.

Architecture related documents:

Configuration this file is using the expertise of a certified architect, who prepares a study related to architecture and also prepares a study related to civil engineering that he prepares with the help of the expertise of a civil engineer.

And according to the text of Article 43 of Executive Decree No. 15-19, the file on architecture must include:

The site plan is on a suitable scale that allows determining the location of the project.

The block plan is on a scale of 1/200 for plots with an area of less than or equal to 500 m², or on a scale of 1/500 for plots of less than or equal to 5000 m² and more than 500 m², and on a scale of 1/1000 for plots of more than Its area is 5000 m² and this plan contains the following data:

*The boundaries of the plot, its area and orientation, and the drawing of fences when necessary.

*Plane curves or flatness area and plot sections.

*The type, height, or number of floors of the neighboring buildings

*The height of the existing buildings programmed on the plot of land or the number of their floors and the allocation of built and non-built areas.

*The total area of the floor and the area built on the land.

*The different designs prepared on the scale 1/50 for data whose inclusions area is less than 300 m² and on the scale of 1/100 for data whose area of inclusions ranges between 300 m² and 600 m².

B. The second stage: the stage of issuing a decision to grant or refuse to grant a planning permission

- After the end of the administrative and technical investigation process, the task of granting or rejecting the license is transferred to the competent authorities, which are each of the President of the municipal popular assembly, the Wali and the Minister in charge of Urbanism, which remains with the authority to grant or refuse within the framework of what is specified by law

2. The competent administrative authorities in issuing the planning permission.

After the license applicant submits an application for obtaining a planning permission, supported by a complete file, he goes through the investigation stage and broadcasts the application, which is carried out by each of the municipality's single window, the state's single window, as well as the competent state authority in charge of reconstruction. After the investigation is completed, the file is transferred to the authorities concerned with issuing the planning permission, which are:

a. In the past and before the issuance of Executive Decree No. 15-19, the municipal popular assembly used to hand over the planning permission to the head of the municipal popular assembly in two cases:

*The first case as a representative of the municipality in the event that there is a land occupation plan for his municipality¹⁷

*The second case is the absence of a plan to occupy the lands at the municipality level, as the head of the municipal popular assembly grants a planning permission as a representative of the state¹⁸, after consulting the Wali.

However, after the issuance of Executive Decree No. 15-19, the President of the municipal popular assembly no longer has the powers to grant a planning permission as a representative of the state. Article 48 of Decree No. 15-19 limited his powers as only a representative of the municipality, and this was confirmed by Article 49 of the same decree when it specified the powers of the governor and the minister in charge of urbanization in the field of granting urban licenses, and when it did not address the powers of the President of the Municipal People's Assembly as a representative of the state, but rather I contented myself with the phrase "delivering the rest of the licenses to the municipal popular assembly.

The Wali: The Wali has a major role in the urban field in general and in granting planning permission especially he has extensive jurisdiction locally and nationally. As for the cases in which the Wali delivers the planning permission, they are:

"Major buildings and facilities completed for the account of the state and the state.

Facilities for production, transportation, distribution and storage of energy and strategic materials.

Buildings located in forested, agricultural, coastal or desert areas¹⁹.

Article 49 of Executive Decree No. 15-19 added the powers of the Wali to grant a planning permission, which are:

Public or private facilities of public utility

Collective housing projects with more than 200 housing units and less than 600 housing units. However, Article 02 of Executive Decree No. 20-342 of November 22, 2020, amending and supplementing the previous Executive Decree 15-19, granted new powers to the governor in granting planning permission s. They are:

-Collective housing projects with more than 200 housing units

-Industrial and tourism investment projects and public or private equipment projects of local benefit in view of their nature, size and scope.

- The facilities producing, transporting, distributing and storing energy and water.
- Works, buildings and facilities completed for foreign countries or international organizations.
- Construction projects that pose a danger to the immediate surroundings.

c. The Minister in charge of reconstruction: Article 67 of Executive Decree No. 90-25 stated that the minister grants planning permission for construction projects of national or regional interest after consulting the one or several Wali if these projects affect several regions or states. As for Article 49 of Executive Decree 15-19, the powers of the Minister in granting planning permission are:

- Public or private equipment of national interest.
- Residential projects equal to or greater than 600 housing units.
- Works, buildings and installations completed for foreign countries or international organizations and their public institutions and concessionaires.
- The facilities producing, transmitting, distributing and storing energy.

However, Article 02 of Executive Decree No. 20-342 of November 22, 2020, amending and supplementing the previous Executive Decree No. 15-19, reduced the powers of the Minister in charge of Construction and: Most of them became the jurisdiction of the Wali, and the powers of the Minister remained represented in:

- Industrial and tourism investment projects and public or private equipment projects of national interest.
- The facilities producing, transmitting, distributing and storing energy and water located in the territory of two or more states.

Issuance of a decision to grant a planning permission.

If the submitted file fulfills all the legal requirements, the planning permission will be granted to the applicant after marking it by the departments mentioned in Article 55 of Executive Decree 15-19 related to the modalities of preparing and handing over construction contracts. The matter concerns:

- The municipality's construction interests, in case the license is handed over by the head of the municipal popular assembly.
- The departments in charge of construction at the state level in case the license is handed over by the governor
- The General Directorate of Reconstruction and Architecture at the level of the Ministry in charge of Urbanism in the event of the issuance of the License by the Minister in charge of Urbanism.

“And this grant may be in the form of granting a planning permission without restriction, granting with reservation, or granting with obligation”²⁰.

1. Granting a planning permission without restriction:

The permission is handed over to its owner on a regular basis, meaning that there were no problems or reservations during the investigation in his file, and “another copy was received at the State Department in charge of construction at the state level, and another copy was at the public's disposal at the headquarters of the Municipal People's Council.”²¹.

2. Granting a planning permission with reservation: In this case, the applicant is granted a planning permission on the condition of adding and inserting: amendments made by the competent authority in order to protect the rights of others, and with reference to Article 27 of Executive Decree 91-175 of May 28th, 1991 specifying the general rules For the development and reconstruction²² and construction, the reasons for the reservations are mainly represented in the prejudice to the construction to be completed “neighboring places, monuments, landscapes or urban...”

3. Granting a planning permission by necessity:

According to Article 46 of Executive Decree 91-176 of May 28, 1991 specifying the modalities for preparing the construction certificate, the retail license, the division certificate, the planning permission, the conformity certificate, and the demolition permit, and handing over that²³ the planning permission is granted to the building applicant with an obligation to carry out additional works or services that must be respected when the construction is for a public site or private services.

For example, we mention obligating the building applicant to provide green spaces or provide emergency exits...

Refusal to hand over the planning permission.

If the results of the administrative and technical investigation are negative, the competent authorities represented in the President of the municipal popular assembly, the Wali and the Minister in charge of reconstruction do not hand over the planning permission to the applicant, based on the reasons they specified

Article 44 of Executive Decree 91-175, on the basis of which the rejection decision must be caused, are:

- 1) Violation of the construction plan for the approved land occupancy plan or that is in the process of being approved.
- 2) If the building project does not comply with the directions of the development and reconstruction plan or the directives stipulated in the provisions of the general rules for development and reconstruction

However, Article 52 of Decree No. 15-19 specified the following cases for refusing to grant a planning permission, which are:

- 1) If the construction project violates the provisions of the approved land occupancy plan or the land occupancy plan in the process of approval, which has exceeded the stage of public investigation, or if the municipality does not possess these documents. .
- 2) A planning permission shall not be granted on partitioned lands in violation of the directives of the partition permission, and the provisions of the partitioned lands file.

Postponing the decision on the planning permission application.

The administration can postpone the granting of a planning permission, provided that this postponement does not exceed a period of one year and provided that it is justified, as stipulated in Article 64 of Law 90-29. However, Article 53 of Executive Decree No. 15-19 specifies the situation in which the decision on the planning permission can be postponed. In it, and it is in the event that the plot of land is within an area subject to the study of

preparation and reconstruction, i.e. “represented by the plot of land occupancy or the master plan for preparation and reconstruction in the case of preparation”²⁴

7. Obligations of the planning permission holder.

Obtaining a planning permission entails a right for its owner to build. It also results in the student’s right to resort to the judiciary in case of arbitrary refusal. It also results in several obligations that fall upon him, and any negligence or inaction in implementing them leads to the intervention of the donor administration to remedy the situation.

Use of an advertising banner: The sign means a visible board attached to the level of the building workshop, rectangular in shape, its dimensions do not exceed 80 cm. It includes information specified in Article 60 of Executive Decree No. 15-19, which are:

- Planning permission number and date of issuance and the administrative authority granting the permission.
- The name, address and capacity of the licensed builder, whether he is the owner or whoever has legal control over the property concerned with the construction.
- The type of licensed building is residential, commercial, craftsman...
- The level of the building authorized in terms of ramp and permissible height.²⁵

Respect the deadlines for implementation and completion of construction: that is, the building owner must complete the completion of construction works within the pre-specified deadlines in the planning permission.

As the determination of the construction period is subject to the discretionary authority of the responsible administration after conducting studies to determine the period required to complete the construction.

Payment of fees: It is the responsibility of the beneficiary of the license to pay the due fees stipulated in the Finance Law.²⁶

CONCLUSION

A planning permission is a permit and an administrative tool whose role is to regulate the field of urbanization in general and construction operations in particular.

The Algerian legislator has paid special attention to it in the various successive urban laws in order to protect the public order, in order to preserve the urban pattern and the environmental environment and to achieve urban development and the judiciary or the patterns of random construction spread despite these procedures and laws, but it remains forms proposed

One of the forms of planning permission protection for public life is the supervisory role, which is represented in undermining and defining the right of ownership, which is a constitutional right, where it is not absolute for the owner to dispose of it despite his absolute authority, except after obtaining the planning permission after passing through several stages in the investigation stage.

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